

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

February 15, 2012

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, George Papandreas, Tom Shamberger, and Leanne Cardoso

MEMBERS ABSENT: Jim Shaffer

STAFF: Heather Dingman, AICP

I. CALL TO ORDER AND ROLL CALL: Bernie Bossio called the meeting to order at 6:30 PM

II. MATTERS OF BUSINESS: Papandreas made a motion to approve the minutes from the January 18, 2012 hearing; seconded by Shamberger. Motion carried unanimously.

III. OLD BUSINESS: None

IV. NEW BUSINESS:

A. CU12-02 / Alana Dennison / 683 Killarney Drive: Request by Alana Dennison for a conditional use approval for a "Class II Home Occupation" at 683 Killarney Drive; Tax Map 54, Parcel 167; R-1, Single-Family Residential District.

Dingman read the Staff report, stating that Alana Dennison seeks to open a massage therapy office at her home at 683 Killarney Drive. All clients will be taken one at a time and will be by appointment only.

According to the, Table 1331.05.01 "Permitted Land Uses" of the Planning and Zoning Code, a "Class 2 Home Occupation" requires conditional use approval in the R-1 District.

The following points highlight the information provided in the petitioner's application:

- The proposed hours of operation for the home occupation are Monday through Saturday from 10 A.M. to 8 P.M.
- The number of clients at one time is estimated to be one or two customers that travel together.
- The average number of clients per day is estimated to be two to five.
- The average number of clients per week is estimated to be twelve to thirty.

- The applicant states that approximately 100% of clients drive.
- No delivery trucks are anticipated to visit the site on a regular basis.
- The home's driveway is approximately 19 feet wide and 30 feet deep. This driveway can accommodate at least two cars parked side by side, possibly more.
- Off-street parking is available along the Killarney Drive frontage at the subject, but not on the Colonial Drive frontage. Site visit findings revealed that traffic flow is heavier on the mixed use Killarney Drive. Therefore, available off-street parking is a necessity.

Addendum A of this report illustrates the location of the subject site and a photograph of the single-family dwelling.

Planning Staff has received seven letters of public comment regarding this, all are attached hereto. Most letters express opposition, but not all. Some letters express mixed opinions. The R-1 District permits "Class 2 Home Occupation" as a conditional use approval. The Board of Zoning Appeals has heard similar R-1 District "Class 2 Home Occupation" cases over the last few years.

Several of the attached letters of objections express concerns regarding traffic on Killarney Drive. Applying a condition to reduce the number of customers per week, or per day, may provide a suitable solution to ease the anticipated traffic impact as expressed by objecting neighbors.

Bossio introduced the applicant, Alana Dennison, who stated that she did not need to add anything to the Staff report. Ms. Dennison stated that she was a message therapist that was laid off from Mon General when they ended their Massage Therapy Program.

Cardoso asked the applicant what she perceives to be a day-to-day operation if this were permitted. Dennison stated that perhaps one to three clients per day, scheduled for an hour each, with 30 minute time intervals between, so that there will be no overlapping of clients.

Papandreas asked if she would be the only therapist at that location, to which Ms. Dennison answered yes, she would be the only therapist at that location.

Bossio asked if it would ever be necessary to use on-street parking, to which Ms. Dennison answered no, there should never be a need for that. Bossio stated that the applicant has been given 12 conditions with which she would need to comply. Ms. Dennison agreed with him that she understood that she must meet those requirements.

Cardoso asked the applicant if a clientele limit (per day) would be placed, would she be willing to comply. Ms. Dennison answered that she would.

Bossio asked the applicant about signage on her vehicle, and if she would have a problem with the Board not allowing her to have a vehicle sign. Ms. Dennison stated that she had not even thought about putting a sign on her car. Therefore she would not have a problem with not having vehicle signage.

Cardoso asked about deliveries to the applicant's home, to which Ms. Dennison stated she will be receiving very few deliveries.

Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request.

Lori Montgomery of 358 Crawford Avenue, Star City stated that she believes that traffic is not being caused by small businesses such as this, but rather people cutting through neighborhoods to take shortcuts. She further stated that she was a patient of Ms. Dennison's at Mon General, and she would be very surprised if she could see more than three clients per day, as it is a very physically demanding job.

Bossio asked if anyone was present to speak in opposition to the request.

Ruth Donaldson of 1300 Heritage Place, Morgantown stated that she originated a petition, on which she received 60 signatures. She stated that the petitioners signed, objecting to the home business, due to already too much congestion of traffic in this area. She further stated that there is already a major problem of drivers not stopping at STOP signs.

Joann Evans of 1285 Anderson Avenue, Morgantown stated that she has been a resident of the Suncrest area for 43 years. She stated she is not opposed to change, but feels that putting a business on that corner is a big mistake. She also stated a problem with drivers not stopping at STOP signs and feels more enforcement is needed.

Nancy Ganz of 1276 Colonial Drive, Morgantown stated that she is an affected neighbor that is just out of the 200 foot notification area and is also there to represent the Suncrest Neighborhood Association. The neighborhood has been concerned about this particular area for many years. The issue of traffic in this area of Suncrest comes up at just about every Traffic Commission and Pedestrian Board meeting.

There being no further comments in opposition, Bossio declared the public hearing portion closed.

Dingman read Staff recommendation, stating that the Board must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff recommends the following revisions to the petitioner's findings of fact.

Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends approval of the requested home occupation for a massage therapy and fitness office at the requested location, subject to the following conditions included:

1. The proposed massage therapy home occupation must not produce detectable fumes, odors, dust, heat, noise, vibration, glare, electro-magnetic field, electrical interference, or other effects outside the dwelling, including transmittal through vertical or horizontal party walls.

2. The proposed massage therapy home occupation shall not require fixed installation of equipment or machinery that substantially changes the residential character of the dwelling.
3. The proposed massage therapy home occupation may not occupy more than twenty-five (25) percent of the floor area of the principal structure, and may not require internal or external alterations or construction features not customary to a residential dwelling.
4. The proposed massage therapy home occupation shall be conducted entirely within the footprint of the existing single-family dwelling. No home occupation shall be conducted outdoors or in any accessory building or garage, except that parking of a vehicle used in conducting the business and/or simple storage of materials or goods used in association with the business may be permitted in such buildings.
5. The proposed massage therapy home occupation may have no more than one vehicle with business identification, and shall have no vehicle with greater than one (1.0) ton capacity and shall not have any trailer.
6. Except as required by State law, there shall be no exterior indication of the proposed massage home occupation, no exterior signs, nor any other on-site advertising visible from the exterior.
7. The proposed massage therapy home occupation shall not involve on-site employment of persons not residing in the dwelling.
8. The proposed massage therapy home occupation shall be registered as a business with the City of Morgantown Finance Office and shall pay applicable business and occupation taxes.
9. There will not be merchandise delivery and/or pick-ups to and from the premises that are associated with the home occupation, and that utilize a commercial delivery service or the United States Postal Service.
10. Retail sales shall not occur nor services provided on the premises on a regular basis or in substantial volume, such that customer visitation to the premises is deemed to be unreasonable.
11. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without first obtaining approval by the Board of Zoning Appeals.
12. If the holder of subject massage therapy home occupation permit wishes to make changes in the conduct of the business that departs from the description in the application or from any other conditions or restrictions imposed by the Board of Zoning Appeals, the holder must obtain prior permission of the Board of Zoning Appeals.

Bossio allowed the applicant time for rebuttal, during which she stated that she knows traffic is a huge concern for everyone, but many of the traffic and parking issues brought up have nothing to do with her or her proposed home business. She did not deny the number of cars in her driveway, but stated those are all owned by visiting family members.

Bossio asked the applicant, if this case is approved, would she begin parking her vehicles in the garage to allow room in the driveway for client parking. Ms. Dennison stated that she would do so.

Cardoso asked what time of day the traffic is most heavy. Ms. Dennison stated that it is around 3:00 p.m. Cardoso asked if she would be willing to move her business hours around the heavy traffic time, if necessary. Ms. Dennison agreed to do that, if necessary.

Shamberger stated that a stipulation could be made that restricted client parking to the driveway and prohibited customers from parking in the street.

Papandreas stated he does not feel that many of the neighbors' concerns stated are relevant to the applicant's request. He agreed with prior proposed stipulation that restricted client parking to the driveway and prohibited customers from parking in the street.

Cardoso also mentioned stipulating that clients not come and go during bus stop pick-up or drop-off times. The Board agreed that regulating client's hours was not a recommend condition.

Papandreas stated that he would hope that permission for home occupations would continue to be thoughtfully considered, as in the past.

The Board agreed to add the following conditions to Staff recommendations:

1. The holder of the subject massage therapy home occupation shall park all personal vehicles within the dwelling's attached garage during regular business hours.
2. Both driveway spaces on premises shall remain unobstructed for clients of the massage therapy home occupation to utilize for parking.
3. The massage therapy home occupation shall not utilize the on street parking.
4. There shall be thirty minute intervals between client appointments.

Also, condition #5 was amended to read as follows: "The proposed massage therapy home occupation may not have a vehicle with business identification, and shall have no vehicle with greater than one (1.0) ton capacity and shall not have any trailer."

Papandreas made a motion to approve the Findings of Facts, with strike out and underlined portions; seconded by Shamberger. Motion carried unanimously.

The Finding of Facts included in this motion are as follows:

Finding of Fact #1 – The home occupation will be compatible with residential uses of the dwelling, in that:

According to the petitioner, the home business will be in two rooms of the house that are not used by the residents and will not interfere with any occupants. With doors installed the clients and the residents will be separate. The home will remain a home.

Finding of Fact #2 – The home occupation will not change the residential character of the dwelling, in that:

There is no need for extra construction. They are interior doors. Everything will look the same on the outside as it does now. There will be no exterior changes to the home.

Finding of Fact #3 –The home occupation will not detract from the residential character of the neighborhood, in that:

There will be no work at all done to the outside of the house for the business. There will be no way of knowing the business exists by driving or walking by. The proposed type of home based business is such that advertising should not be necessary so that the existing residential character in the immediate area will be maintained. There is no new construction, no structural alterations or additions are necessary.

Finding of Fact #4 – Congestion in the streets will not be increased, in that:

Killarney is a very busy street – almost 24/7. The 2 – 4 cars that the home business will have daily will not be significant given the existing mixed use commercial and multi-family land use patterns on this segment of Killarney Drive between Colonial Drive and Van Voorhis Road.

Papandreas made a motion to approve CU12-02, with additional conditions added; seconded by Cardoso. Motion carried unanimously.

B. V12-02 / Altered Ego / 753 Chestnut Ridge Road: Request by Christina DeAntonis, on behalf of Altered Ego Boutique, for variance relief from Article 1369 as it relates to signage at 753 Chestnut Ridge Road; Tax Map 56, Parcel 4; B-2, Service Business District.

Dingman read the Staff report, stating that the applicant requests a variance from the maximum allowable wall signage area to permit a sign greater than 0.6 square feet per linear foot of tenant building frontage. Altered Ego is boutique apparel store that recently relocated from the unincorporated County into the Morgantown City limits. They have remodeled the interior of their new Chestnut Ridge Road location and added new signage. Addendum A of this report illustrates the location of the subject site.

In the process, the applicant ordered a new sign with the expectation that the signage allowance for their tenant space would be the same size as neighboring tenants and the other businesses on the Chestnut Ridge Road Corridor.

Article 1369.07 (I) (1) provides a maximum area of all wall signs on a building to 0.6 square feet per linear foot of tenant building frontage in the B-2 District. The tenant building frontage of the Altered Ego is approximately 22 feet, which calculates to a maximum wall sign area of 13.2 square feet. The new Altered Ego sign is 24 square feet. This request requires a 10.8 square foot variance.

Bossio introduced the applicant, Christina DeAntonis of 753 Chestnut Ridge Road, Morgantown. Ms. DeAntonis stated that she grew up in Morgantown, but moved away 10 years ago to pursue

her dream of working in Hollywood. While there, she worked on movie sets and commercials. She was happy to move back to Morgantown a few years ago to bring her business here. Prior to this move her business was located behind Walgreens. She stated she was excited to move her business into City limits out of the County, where she feels there will be many advantages.

Cardoso asked what the reflective material is on the current sign. DeAntonis stated that it is a type of plastic made in Canada and England. She first saw it in Los Angeles. and knew she wanted to use it.

Papandreas asked if the sign being proposed is the same size as the previous sign. DeAntonis stated that yes, it is, and she was unaware that there was a size requirement for the signage.

Bossio clarified to the Board that the requested sign is the same sign that is already installed. The applicant is asking permission to keep the sign that is already installed because she was unaware of the sign requirements.

Bossio opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request.

Victoria DeAntonis, the applicant's sister, 753 Chestnut Ridge Road, apologized for not realizing there was a sign regulation. They were seeing other large signs and didn't know there was a restriction. She echoed her sister's excitement to be located within City limits. She further stated that the sign itself has drawn customers in to the store.

Bossio asked if anyone was present to speak in opposition to the request. There being no comments in opposition, Bossio declared the public hearing portion closed.

Dingman read Staff recommendation, stating that The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Staff recommends that the Board grant a variance of 10.8 square feet from the maximum wall sign area for V12-02 as requested.

Cardoso stated that she does not have a problem with the size of the sign, as there are many other large signs in that same area. She also stated that she does not have an issue with the reflective material, but something to consider for possible future signage of this type of material is that it could potentially cause a blinding effect on drivers when the sun reflects.

Dingman stated that there are no regulations in the current sign code that addresses hazardous signage. Shamberger stated that the type of material is irrelevant to this case. Bossio agreed, but feels that the sign code needs to be re-worked in the future.

Papandreas made a motion to approve the Findings of Facts with strike through and underline portions; seconded by Cardoso. Motion carried unanimously.

The Finding of Facts included in this motion are as follows:

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Altered Ego is in the middle of a six-unit plaza. Altered Ego Boutique's doors are approximately 72 feet from the street. Altered Ego would not be noticed if we did not have a sign approximately the size of the other businesses in the plaza. Altered Ego needs to ensure that potential customers are able to locate the business.

In addition, the storefront is not facing Chestnut Ridge Rd. A sign this size is necessary in order for the general public to see it.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

If Altered Ego followed the zoning regulations based upon the store front, Altered Ego's sign would only be 13.2 square feet which may limit customer's ability to see and find the store. The subject property is located along one of the heaviest traveled corridors within the region and adjacent to many other businesses with signs that, in many instances, exceed the square footage, and of the proposed sign. Lesser signage may not allow adequate visibility for the business in comparison to other nearby businesses in the same vicinity with similar or greater comparable signage.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The sign would be mounted in the same manner and location relative to our storefront as the other tenants in the plaza. A sign permit and building permit will be obtained for the sign. Adequate visible signage identification should enable traffic viewers a greater reaction time to safely navigate at moderate speeds through several traffic lanes to make the turn into the facility. By more clearly identifying the store, the potential of a traffic collision or harm to the public welfare, property, or improvements should be minimized.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The area of the sign appears to be consistent with the predominant commercial signage patterns along Chestnut Ridge Road and Van Voorhis Road, which do not appear to diminish the market value or vitality of the well-established commercial corridor. Variance relief relative to area cannot contribute to nor mitigate existing traffic volumes within the corridor.

Papandreas made a motion to approve V12-02; seconded by Shamberger. Motion carried unanimously.

V. OTHER BUSINESS

A. Public Comments: None

B. Staff Comments: Staff asked for a Board recommendation on cases V11-46 and V11-47. The Board recommended that cases V11-46 and V11-47 be removed from the table and be put on the March 21, 2012 Board of Zoning Appeals Agenda.

VI. ADJOURNMENT: 8:20 PM

MINUTES APPROVED:

March 21, 2012



BOARD SECRETARY:

Heather Whitmore Dingman, AICP